

1
2
3
4 UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
6 OAKLAND DIVISION

7 ODIL BOLGAEV, et al.,
8 Plaintiffs,

9 vs.

10 CITY AND COUNTY OF SAN
11 FRANCISCO, et al.,
12 Defendants.

Case No: 20-cv-01293-SBA

ORDER DISMISSING ACTION

13
14 On September 20, 2019, Plaintiffs Odil Bolgaev (“Bolgaev”) and minors S.A., D.A.,
15 and J.A. (collectively, “Plaintiffs”) initiated the instant action in state court, bringing claims
16 under 42 U.S.C. § 1983 and California law against Defendants the City and County of San
17 Francisco (the “City”), Chief of Police William Scott (“Scott”), and an unknown individual
18 identified as John Doe (“Doe”) (collectively “Defendants”). On February 20, 2020, the
19 City removed the action to this Court, asserting federal question jurisdiction under 28
20 U.S.C. § 1331 with respect to Plaintiffs’ section 1983 claim and supplemental jurisdiction
21 under 28 U.S.C. § 1367 with respect to Plaintiffs’ state law claims. Dkt. 1.

22 Thereafter, the City filed a motion to dismiss pursuant to Federal Rule of Civil
23 Procedure 12(b)(6). Dkt. 6. Plaintiffs did not oppose the motion. On April 8, 2020,
24 Magistrate Judge Joseph C. Spero issued a Report and Recommendation Regarding Motion
25 to Dismiss (“R&R”), wherein he recommended that the Court grant the City’s motion to
26 dismiss with leave to amend. Dkt. 20. Magistrate Judge Spero further recommended that
27 the Court dismiss the claims against Scott and Doe without prejudice for lack of timely
28 service. Id. Plaintiffs did not file an objection to the R&R.

1 On May 4, 2020, the Court issued an Order Adopting Report and Recommendation
2 In Part and Dismissing Complaint With Leave to Amend (“Order”). Dkt. 28. The Court
3 adopted the recommendation to grant the City’s motion and dismiss Plaintiffs’ claims with
4 leave to amend. Id. The Court ordered Plaintiff to file an amended complaint within 14
5 days of the date the Order was filed. Id. The Court declined to adopt the recommendation
6 to immediately dismiss the claims against Scott and Doe for lack of timely service, finding
7 that Plaintiffs had through May 20, 2020 to effectuate service. Id. Nevertheless, the Court
8 warned Plaintiffs that it would dismiss Defendants Scott and Doe from the action without
9 prejudice and without further notice if they failed to complete service by May 20. Id.

10 As set forth in the Court’s Order, the deadline to file an amended complaint was
11 May 18, 2020 and the deadline to complete service on Scott and Doe was May 20, 2020.
12 Plaintiffs have neither filed an amended complaint nor shown that service has been
13 completed. Instead, on May 27, 2020, the parties filed a Joint Case Management Statement
14 and Notice of Plaintiffs’ Intent Not to File an Amended Complaint. Dkt. 31. In it,
15 Plaintiffs advise that they do not intend to file an amended complaint. Id. at 2. Plaintiffs
16 request that the Court “enter a dismissal without prejudice as to all defendants pursuant to
17 the Court’s Order and remand the matter back to Superior Court.” Id. The City requests
18 that, as to it, the Court dismiss the action with prejudice. Id.

19 Dismissal of the action against Scott and Doe will be without prejudice pursuant to
20 Federal Rule of Civil Procedure 4(m). Based on Plaintiffs’ failure to state a claim against
21 the City and their notice of intent not to file an amended complaint, however, dismissal of
22 the action against the City will be with prejudice pursuant to Rule 12(b)(6). See Edwards v.
23 Marin Park, Inc., 356 F.3d 1058, 1065 (9th Cir. 2004) (holding that, when a complaint is
24 dismissed with leave to amend for failure to state a claim and the plaintiff provides notice
25 of his intent not to amend, the dismissal under Rule 12(b)(6) “ripens into a final, appealable
26 judgment”); see also Fed. R. Civ. P. 41(b) (“any dismissal not under this rule—except one
27 for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates
28 as an adjudication on the merits”).

1 Although Plaintiffs request that the action be dismissed without prejudice as to all
2 defendants, they provide *no justification* for that request. The Court also finds no basis for
3 Plaintiffs' request that, following dismissal as to all defendants, the action be remanded to
4 state court. Once the action is dismissed—whether the dismissal is with or without
5 prejudice—there is no action to remand to the state court.

6 Accordingly, IT IS HEREBY ORDERED THAT:

7 1. The action is DISMISSED without prejudice as to Defendants Scott and Doe
8 pursuant to Rule 4(m).

9 2. The action is DISMISSED with prejudice as to the City pursuant to Rule
10 12(b)(6).

11 3. The Clerk shall close the file and terminate any pending matters.

12 IT IS SO ORDERED.

13 Dated: June 2, 2020

14 
15 SAUNDRA BROWN ARMSTRONG
16 Senior United States District Judge
17
18
19
20
21
22
23
24
25
26
27
28